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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/593,796	01/30/96	WATTERSON	S 2727

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EXAMINER	
REICHARD, L	
ART UNIT	PAPER NUMBER
3302	9

DATE MAILED:

12/17/96

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary

Application No.

08/593,796

Applicant(s)

Watterson et al.

Examiner

Lynne A. Reichard

Group Art Unit

3302



☒ Responsive to communication(s) filed on Oct 11, 1996

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-3, 5-13, and 15-22 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 1-3, 5-13, and 15-21 is/are allowed.

☒ Claim(s) 22 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 8

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Rejections Under 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 22 is rejected under 35 U.S.C. § 103 as being unpatentable over Dalebout et al. '396, hereinafter referred to as "Dalebout", in view of Day and the Crosswalk brochure, hereinafter referred to as "Crosswalk".

In regard to claim 22, Dalebout discloses a treadmill comprising: support structure (12) configured to be free standing and having feet means (57,91) for positioning on a support surface and having an upright structure (42) extending upwardly from said feet means; a tread base having a front, a rear, a left side and a right side and an endless belt (18) positioned between said left side and said right side; and a fixed handle structure (44) connected to said support structure configured for grasping

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by a user positioned on said endless belt with said tread base in said first position. Dalebout fails to disclose a tread base connected to said support structure to be moveable between a first position and a second position as claimed. Day teaches a tread base connected to the support structure to be moveable between a first position (Fig. 1) in which said endless belt is positioned for operation by a user positioned thereon and a second position (Fig. 2) in which said rear of said tread base is moved toward said support structure for storage. It would have been obvious to one of ordinary skill in the art to modify the treadmill discloses by Dalebout to use a tread base movable between a first position and a second position for storage in view of the teaching of Day. Dalebout further fails to disclose left and right rigid handles pivotally connected to respective left and right uprights and positioned for grasping by the user. Crosswalk teaches the use of both fixed and pivotal handles on a treadmill to allow the user to exercise his arms as well as his legs while using the treadmill. It would have been obvious to one of ordinary skill in the art to modify the treadmill disclosed by Dalebout to include a pair of pivotally connected handles in view of the teaching of Crosswalk.

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Indication of Allowable Subject Matter

Claims 1-3, 5-13, and 15-21 are allowable over the prior art of record.

Response to Arguments

Applicant's arguments with respect to claim 22 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).


A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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Any inquiry concerning this communication should be directed to Lynne A. Reichard at telephone number (703) 308-1159. Additionally, any facsimile transmissions concerning this application should be directed to Lynne A. Reichard at fax number (703) 305-3590.


LYNNE A. REICHARD
PRIMARY EXAMINER
GROUP 3302

Lynne A. Reichard
December 8, 1996